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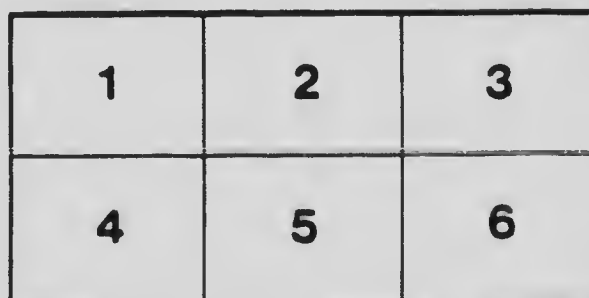
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Municipal Institutions
— and —
Provincial Government

AN ADDRESS BY
THE HON. W. J. HANNA
Provincial Secretary
of Ontario

BEFORE
The National Municipal League
of America

TORONTO, NOVEMBER 14th, 1913

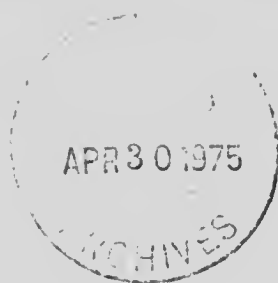


Municipal Institutions — and — Provincial Government

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TORONTO, NOVEMBER 14th, 1913



Municipal Institutions and Provincial Government

Just a few remarks from the standpoint of Provincial Government in its relation to Municipal Corporations, or Municipal Institutions more properly called.

I do not intend to trace the development of Municipal Institutions from their inception down to the present, only pointing out that the seed of our present system of local self-government was sown in the Parish and Town Officers Act of 1553, in which provision was made for summoning the inhabitant householders of the parish to town meeting to choose a clerk, assessor, collector, overseer of highways and fenceviewers and two wardens. The meeting had no legislative power except to determine the height of lawful fences and the periods for which cattle and horses should be allowed to run at large.

Later on in towns some of the powers of the Quarter Sessions were transferred to Boards of Police elected by the resident householders. These powers included the making of assessments, or purchasing real estate, for procuring fire engines and a supply of pure and wholesome water, and for lighting, paving and repairing the streets.

Larger powers were granted by the special Acts incorporating them to certain cities and towns, e.g., Toronto in 1834, and Kingston in 1838, and the government of them was placed in the hands of a Mayor and Common Council.

So far so good, but affairs in the rural municipalities still continued to be managed by the Quarter Sessions, the members of which were life appointees of the Crown, and in no way responsible to the people. This distinction between the urban and the rural municipality so incensed public opinion that it led to the passing of The

Districts Councils Act in 1841, which was the first measure of local government in the rural municipalities.

This Act provided for the election of a District Council with power to pass by-laws relating to roads, bridges, schools, etc., and to levy taxes upon real and personal estate for such purposes.

Then on to the Baldwin Municipal Act of 1849, entitled "An Act to provide by one general law for the erection of Municipal Councils and the Establishment and Regulation of Police in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada."

Its title is sufficient to indicate its scope, and it has very properly been designated as the Magna Charta of Municipal Government in Canada.

Although the Act has been revised a number of times since and larger powers granted from time to time to municipalities, the outstanding features of the Act of 1849 still remain.

Since that date perhaps the most important revision was that which came into force on July 1st of this year.

It was the result of over two years of constant labour on the part of skilled draftsmen and men of large experience in the practical working out of the Act.

The bill was introduced at the session of 1912, was withdrawn during the interval and distributed widely throughout the Province with running comments showing the important changes proposed.

Many consultations were held with municipal solicitors, clerks and Treasurers, and the bill, after careful consideration, received the Royal Assent May 6th, 1913.

The Municipal Act is the handbook, the book of knowledge, and, if you please, the Bible of members of Council and municipal officers. It starts with the creation of the corporation and the election of members, then gets the house in order by the appointment of clerks, treasurers, assessors and collectors and prescribing their

duties. Then we come to the easy stage: passage of controverted elections, bribery and corrupt practices to the general powers to contract debts and grant loans; then, noticing all along the way beautiful little mottoes such as "A member of the Council shall not have any interest in any contract with the corporation"; "Every deputy returning officer who falsifies a voters' list shall incur a penalty of \$2,000 and be liable to imprisonment for one year"; "Every clerk guilty of perfeasance shall incur a penalty of \$400"; "A member of a Council, who votes for any diversion of a sinking fund shall be disqualified from holding a municipal office for two years." Then on again to the general powers to pass by-laws—to prohibit, regulate and control innumerable things, ranging from the storing of gunpowder to the running at large of dogs; from the location of apartment houses to the offering of rewards for the apprehension of house-thieves, and from the regulation of merry-go-rounds to the prevention of slaughter-houses; then we come to highways and bridges—some highways so smooth that a sleeping baby would not wake up in a lumber waggon, others so rough that you have to hang on when riding in a \$10,000 auto going ten miles an hour; some bridges strong enough to sustain the weight of a giant mogul engine, others barely sufficient to carry a five-ton traction engine. And so on until we finally are brought to a halt by a sign—"Prosecution for Offences and Penalties."

The Municipal Act has long been looked upon as the happy hunting ground for those in need of something to amend; not because the old Act was not steady on its pins, but simply because a fly speck had crept in here and there where no period was required, and it had to be wiped out or the machinery of municipal government would cease to work; or perhaps because the Township of Faraway had a bridge 300 feet in length and thought that the county should bear a part. The member must get a bill for that purpose or stay at home. Well, the member got it. The name of the township was not men-

tioned, because it is an unwritten law that special legislation cannot be secured by way of an amendment to the general law, nor was the particular bridge named nor the concession in which it was situate mentioned, but the amendment was clothed in language that could apply only to the Faraway bridge.

The Township of Getaway in the next county found it out. They had a 300-foot bridge all right, but in attempting to apply the amendment they fell down, one difficulty being that their bridge did not happen to be on a highway, "which is an important road affording means of communication to several municipalities"—for so read the amendment.

It is related of the late Sir Oliver Mowat that one of his most humble followers went to him with the information that his constituents were complaining of his not introducing any bills, and that Sir Oliver being impressed with the seriousness of the situation told him to consult the Law Clerk and see if there was not some section in the Municipal Act which required amendment.

This was done: a bill was drafted to remedy a grievance known to the Law Clerk but not to the member, was introduced, received general public commendation, and finally passed. There was joy among the constituents of the member.

During late years, not only during the term of office of this Government, but also while the present Lieutenant-Governor held the reins as Attorney-General and Director of Legislation, it has become an unwritten law that any bill proposing important changes to the Municipal Act should, even if it was favorably received, be withdrawn after consideration to afford an opportunity of its being distributed in the interval between sessions.

And right here let me say that my experience as Chairman of the Municipal Committee of the Assembly, if it has taught me anything, has taught me this: that it is wise to go slowly along the line of making amendments to the Act to remedy supposed defects or grievances. Very

often an amendment not only hits the mark aimed at, but hits several other marks which were not aimed at—the remedy thus being worse than the disease. In other words, in applying a remedy to meet the grievance of an individual you impose a hardship upon a number of persons not intended to be affected; or it may be that the amendment not only fails to accomplish its intended purpose, but also takes away a valuable power already possessed. I have a case in mind: A bill was introduced by way of general amendment to the Municipal Act, the intention of which was to give power to do away with a particular private hospital which was a nuisance in the neighborhood; but on looking more closely at the amendment it was found that it was wide enough to put out of business all the private hospitals in the municipality.

Amendments which look rosy enough at the time of their passing have turned out in many instances not to be so rosy on longer consideration.

Viewed from almost any standpoint municipal institutions in Ontario have been a huge success. Some of the reasons are:—

1. The comprehensiveness of the powers and the wide measure of local autonomy or government granted by the charter.
2. The freedom of action of Municipal Councils and electors.
3. The direct responsibility of every member of the Council to the people.
4. The enactment of legislation from time to time to meet formulated public opinion and special cases.
5. The supervision and prohibitions in matters of finance.
6. The common honesty of members and officers of Municipal Councils.

Under the first two heads, "Comprehensiveness of Powers" and "Freedom of Action," let me say that it

will be found that the Act of last session contained a large number of new provisions not only increasing the powers of, but also indemnifying and protecting, the corporation in the common exercise of its powers. I will only cite a few. Let me read section 250: "Every Council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for in this Act as may be deemed expedient and are not contrary to law, and for governing the proceedings of the Council, the conduct of its members, and the calling of meetings."

Somewhat of a Magna Charta in itself! This section, known as the "General Welfare" provision, was first enacted in 1858, and came down through all the years without amendment until last year, when its scope was considerably broadened. Comparison between the old and the new will show.

Then there is section 249 (2); let me read: "A by-law passed by a Council in the exercise of any of the powers conferred by and in accordance with this Act, and in good faith, shall not be open to question, or be quashed, set aside, or declared invalid, either wholly or partly, on account of the unreasonableness or superfluousness or unreasonableness of its provisions or any of them."

This protection is altogether new.

Then look at section 253 (4). It reads: "The granting or refusing of a license to any person to carry on a particular trade, calling, business or occupation, or of revoking a license under any of the powers conferred upon a Council or a Board of Commissioners of Police by this Act, or any other Act, shall be in its discretion, and it shall not be bound to give any reason for refusing or revoking a license; and its action shall not be open to question or review by any court." Certainly a large discretion and freedom of action!

Again widows and spinsters possessing the property qualification in the districts, i.e., in New Ontario, were given the right to vote at municipal elections and on local option by-laws.

Isn't that freedom of action for electors?

Then look at section 323. It reads: "The determination of a Council as to the time when, the manner in which, the price for which or the person to whom any property of the corporation, which the Council may lawfully sell, shall be sold shall not be open to question, review or control by any court if the purchaser is a person who may lawfully buy and the Council acted in good faith."

This protection is altogether new.

Let me read also what section 460 says:

"(8) A corporation shall not be liable for damages for non-repair unless the person claiming the damages has suffered by reason of the default of the corporation a particular loss or damage beyond what is suffered by him in common with all other persons affected by the want of repair."

"(9) Where a bridge which it is the duty of a corporation to repair is destroyed or so damaged that it is necessary to rebuild it the Ontario Railway and Municipal Board may, upon the application of the corporation, relieve it from the obligation to rebuild the bridge if the Board is satisfied that it is no longer required for the public convenience or that the rebuilding of it would entail a larger expenditure than would be reasonable, having regard to the use that would be made of the bridge if it were re-built." Is comment necessary? Corporations which have a number of expensive bridges will reap a large benefit.

The power to revoke licenses of pool and billiard rooms, theatres, music halls, bowling alleys and moving picture shows, etc., was conferred for the first time last session.

A new power has been given to the Ontario Railway and Municipal Board to approve of forms of by-laws, notices and other proceedings, and every form so approved shall not be open to objection on the ground that it does not comply with the Act. The Board can as well cure by their certificate defects and irregularities in municipal debentures and securities.

You see how far-reaching such provisions are, e.g., in submitting a local option by-law to have a guarantee that the by-law cannot be set aside because the proceedings have been irregular.

A general power to enter on and expropriate land has been conferred on the corporation wherever it has been given power to acquire land.

Prior to the new Act expropriation was limited to certain limited purposes, and in some cases only with the approval of the Lieutenant-Governor-in-Council.

This perhaps is as good an example as could be quoted to show the confidence of the Legislature in municipal corporations, for the power of expropriation is an extraordinary one and should be exercised with great care.

And now I come to the sad part of the story: the relation of how the Lieutenant-Governor-in-Council came to be shorn of his strength in matters affecting municipalities.

Perhaps there has been too much mixing of the Lieutenant-Governor-in-Council in the actions of municipal corporations; at any rate when the Act was passed in 1906 constituting the Ontario Railway and Municipal Board we handed over to that Board most of our powers of supervision and approval.

We hung on to a few cherished ones until last session, when we surrendered; with the result that the Lieutenant-Governor-in-Council is practically a minus quantity so far as being a necessary party to the acts of municipal corporations.

Under the heading of "Responsibility of Members of Council to the People," I would say that every member

is obliged to render an account of his stewardship to the electors annually. This means that a member who has done things and has been busy on his job will be re-elected if he offers himself. If, on the other hand, he has hidden his talent in a napkin he will be quietly dropped.

In answer to the argument that members of Council should be elected for two years in order to ensure continuity, I would point out that a section was put in the Act in 1906 providing for a two-year term, with the assent of the elector. So far as I know, only one municipality in the Province elects its members for two years, and that is done under the authority of a special Act relating to the particular municipality.

Under the heading of "Enactment of Legislation to Meet Public Opinion and Special Cases," I would point to the provision for the election of a Board of Control in 1896 in cities over 100,000. This power was also granted in 1899 to cities of more than 45,000. It may be that later on the same power will be extended to cities of a less population, but there has been no public demand for any such legislation as yet.

The Board of Control is the advance agent, the time-saver of the Council, it goes before and prepares the way and makes the path straight. This is the chief reason for its existence. The Controllers are expected to give as much of their time as is necessary for the despatch of the business of the corporation. In a large city it would be impossible for the Council to go into all the details of the many and various matters which have to be dealt with. The Board prepares estimates of proposed expenditure for submission to Council, awards contracts, nominates, suspends and dismisses officers, and submits proposed by-laws to the Council.

The action of the Board can only be reversed or varied by the Council on a two-thirds vote of the members present, but a majority of the Council may refer any matter back to the Board for re-consideration.

Toronto, Ottawa and Hamilton are the only cities which have adopted the system, and I understand the Board has well and efficiently served the interests of the people in all three cities.

I would also refer you to the Local Municipal Telephone Act, passed in 1968, providing for the construction and operation of telephone systems by municipal corporations and the extension of them into other municipalities.

Here again we bring in the Ontario Railway and Municipal Board and provide that it shall give the necessary advice and help to the municipality in the construction of the line and the conduct of its business, and a Provincial expert on telephones is at all times available for the purpose of rendering assistance.

But the most important Act under this head is the Public Utilities Act of last session, passed at the urgent request of a number of municipalities. Its chief object is to provide for the election by the people at large of one Commission to manage and control all the public utilities of the corporation, thus effecting concentration, centralization, and making for efficiency of service. Heretofore there has been a separate Commission for each public service. While the Mayor is *ex officio* a member of the Commission, the Council has no jurisdiction over the acts of the Commission, the only function of the Council being to supply the money necessary for the carrying on of the services. This is not government by Commission as so understood, and I say nothing to-day on municipal government by Commission except that as yet there has been no call for any such legislation. I believe one municipality did attempt to make such provision for itself by way of a private bill, but it was withdrawn before reaching the committee stage.

In addition to the above general Acts, every session there are upwards of one hundred applications to Parliament for special legislation by way of Private Bills affecting only a particular municipality. It may be for authority to borrow money without the assent of the

electors, or to confirm deficient money by-laws, or to do something not specially authorized by law or in a different way than that authorized.

These applications are dealt with by the Private Bills Committee. If the application is one for authority to renew or consolidate a debenture indebtedness or to issue debentures to cover a floating debt it is referred to the Ontario Railway and Municipal Board for their report. The Board on hearing the application look into the condition of the finances of the corporation and make a report to the Assembly as to whether or not it is reasonable that the bill become law.

And right here let me say that we do not approve of a floating debt; this is an overdraft in the bank carried beyond the year. If it is shown that the money has been spent on permanent public improvements the necessary legislation is generally granted, but the Legislature has seen fit in two or three cases to put a provision in the bill prohibiting the corporation from borrowing any further sum until its debts have been paid.

Under the head of "Supervision and Prohibitions," we have provided for an investigation by the County Judge of charges of malfeasance, breach of trust, or other misconduct on the part of a member of the Council whenever the Council passes a resolution requesting the Judge to investigate. A Commission to inquire into the financial affairs of the corporation may also be appointed by the Lieutenant-Governor on the application of one-third of the members of a Council or of thirty municipal electors.

Again, we have a Provincial Municipal Auditor, whose duty it is to prescribe the method of book-keeping for the different municipalities, and to examine and audit municipal accounts either of his own motion or when requested by any two members of the Council.

Again, we require the Treasurer to send in to the Bureau of Industries, which is our Statistical Department, an annual return showing the financial condition of the corporation. We also require the Treasurer to

send to the Treasurer of the Province a copy of every money by-law and an annual return showing whether the sinking fund for the year has been raised and how it has been applied and dealt with.

We also say "You shall not contract any debt the payment of which extends beyond the current year unless you obtain the assent of the electors." There are of course exceptions in the case of works which are necessary in the interests of the public health, for example waterworks, sewers, etc., but still the general rule nevertheless applies in the great majority of cases.

As to the common honesty of members and officers of Municipal Councils, I do not think that I need say anything except that we all know that members of Councils and municipal officers are just as efficient and honest a body of men as will be found in any walk of life. If they are not, then not much can be said in favor of your representatives in the Assembly, because, generally speaking, they have served their apprenticeship as members of Municipal Councils or as Clerks of municipalities; in fact to-day we have in the Assembly two members at least who are Clerks of municipalities.

We have had boodling Aldermen and defalcations by Treasurers and Tax Collectors, but these are largely a thing of the past. The only instances that I know of in recent years have been the result of the adoption by a few Tax Collectors of crude and antiquated methods in the pursuit of wealth.

The credit and ability to pay of municipal corporations in this Province could not be better, and while large sums are being borrowed at present for permanent and necessary works of improvement, still it has been a great many years since the Sheriff has had to knock at the door of a municipality with a writ of execution in his hand.

